

EXHIBIT

5

KING
vs.
PARKER, et al.

Volume II
TONY PARKER
November 22, 2021



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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TERRY LYNN KING,

Plaintiff,

vs.

Case No. 3:18-cv-01234

TONY PARKER, et al.,

Defendants.

Video Deposition of:

TONY PARKER
Volume 2

Taken on behalf of the Plaintiff

November 22, 2021
Commencing at 11:36 a.m.

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Declaration of Tony C. Parker

S T I P U L A T I O N S

The Video Deposition of Tony Parker, Volume 2, was taken by counsel for the Plaintiff, at Bass, Berry & Sims, 150 Third Avenue South, Suite 2800, Nashville, Tennessee, on November 22, 2021, for all purposes under the Federal Rules of Civil Procedure.

All formalities as to caption, notice, statement of appearance, et cetera, are waived. All objections, except as to the form of the question, are reserved to the hearing, and that said deposition may be read and used in evidence in said cause of action in any trial thereon or any proceeding herein.

It is agreed that Terri Beckham, RMR, CRR, Notary Public and Licensed Court Reporter for the State of Tennessee, may swear the witness, and that the reading and signing of the completed deposition by the witness were waived.

* * *

THE VIDEOGRAPHER: We are now on the record. Today is Monday, the 22nd of November, 2021, and the time indicated on the video screen is 11:36 a.m.

This is the continuation of the video deposition of the commissioner of the Tennessee Department of Corrections, Tony Parker, in the matter of Terry Lynn King versus Tony Parker et al., Case No. 3:18-CV-01234, filed in the United States District Court, Middle District of Tennessee, Nashville, Tennessee division.

This deposition is being held today in the office of Bass Berry & Sims at 150 Third Avenue South in Nashville, Tennessee.

My name is Augusta Smith, videographer, and the court reporter is Terri Beckham, both in association with Elite-Brentwood Reporting Services.

At this time I'll have counsel identify yourselves and state whom you represent. We'll start with the noticing attorney.

MR. ESQUIVEL: David Esquivel with Bass Berry & Sims, representing the plaintiff, Terry King.

MR. MITCHELL: Rob Mitchell with the

1 Tennessee Attorney General's office, representing
2 defendant Tony Parker and defendant Warden Tony
3 Mays.

4 THE VIDEOGRAPHER: Will the court
5 reporter please swear in the witness.

6
7 * * *

8 TONY PARKER
9 having been duly sworn, testified as follows:

10
11 EXAMINATION

12 QUESTIONS BY MR. ESQUIVEL:

13 Q. Mr. Parker, good morning. Thank you for
14 coming back.

15 A. Yes, sir.

16 Q. We're here this morning to ask some followup
17 questions to your deposition that took place about a
18 month ago.

19 As you remember, I was asking you questions
20 about your conversation with governors Haslam and
21 Lee, and on the advice of your counsel you didn't
22 answer those questions, invoking the privilege.

23 Since that time we've had the opportunity to
24 present that issue to the Court, and the Court has
25 allowed us to reopen the deposition, finding that

1 those questions were proper. So that's what we're
2 going to do here this morning.

3 Is that your understanding of what the
4 purpose of today's deposition is?

5 A. Yes, it is.

6 Q. Is there any reason why you can't give
7 truthful and accurate testimony this morning?

8 A. No.

9 Q. Did you do anything to prepare for today's
10 deposition?

11 A. I did not.

12 Q. Did you meet with your counsel?

13 A. I have not met with anybody nor spoken to
14 anybody about this deposition.

15 (WHEREUPON, the above-mentioned
16 document was marked as Exhibit Number 83.)

17 BY MR. ESQUIVEL:

18 Q. The court reporter has given you a document
19 that's marked Exhibit 83. Do you see that that?

20 A. I do.

21 Q. What is that document?

22 A. It's a declaration, my declaration, regarding
23 my conversations with Governor Haslam and Governor
24 Lee.

25 Q. And on the third page of that document, is

1 that your signature?

2 A. It is.

3 Q. And did you sign this document under the
4 penalty of perjury?

5 A. I did.

6 Q. I want to go through the declaration and ask
7 you some questions about these conversations that
8 are contained in your declaration.

9 A. Okay.

10 Q. Starting with your conversations with
11 Governor Lee, as I understand it from your
12 declaration, you recall having had only one
13 conversation with Governor Lee about executions; is
14 that right?

15 A. That's correct.

16 Q. And in that conversation you all discussed
17 three different areas, and I want to ask you about
18 each one of those in turn.

19 You say in your declaration that you and
20 Governor Lee discussed the importance of providing
21 spiritual counseling to inmates with imminent
22 execution dates. Can you tell me about the
23 substance of the conversation on that point?

24 A. As most people know, Governor Lee is a very
25 spiritual man and governor. He's a Christian, as I

1 am. The conversation centered around inmates having
2 access, make sure they had access to a spiritual
3 advisor and wanting, you know, to make sure that --
4 the gist of the conversation was basically that
5 inmates had someone, a spiritual advisor, to speak
6 to, to talk to, to make sure that, as Governor Lee
7 believes and I believe, that someone facing death
8 should make sure that they've made -- had the
9 opportunity to make decisions that could determine
10 their fate after they leave this world. And
11 basically that was it.

12 Q. Do you recall specifically what you said
13 during the course of that conversation on that
14 issue?

15 A. I don't remember the details exactly what I
16 said. The gist, though, of the conversation was all
17 around the issue of inmates having access to a
18 spiritual advisor, not wanting to see any inmate
19 that is facing death to not have the opportunity to
20 discuss and talk about decisions that we as
21 Christians believe determines where you'll spend
22 eternity. That was the gist of the conversation.

23 Q. Did you describe for Governor Lee what the
24 process was for providing spiritual counseling to
25 inmates who face an imminent execution?

1 A. I did not. I think, again, the conversation
2 was around just the fact that -- my assurance that
3 inmates had opportunities to hear the gospel, to
4 hear -- I know Warden Mays himself, he's made it
5 clear to me he's a Christian. I know Warden Mays.
6 That we want to make sure inmates have access to
7 spiritual advisors, to even, you know, just like
8 with Warden Mays, being the warden, make sure that
9 these people have access to spiritual advisors to
10 answer any questions or to let them talk about, you
11 know, what their feelings are.

12 Q. Do inmates who face imminent executions have
13 access to spiritual advisors?

14 A. Yes.

15 Q. Can you describe for me generally what that
16 access consists of?

17 MR. MITCHELL: I object. That's beyond
18 the scope of the Court's order. I'll let the
19 commissioner answer that, but that is beyond the
20 scope of the Court's limine order.

21 THE WITNESS: They have access, daily
22 access and right up until an hour or two before
23 execution, access to a spiritual advisor. And
24 certainly Warden Mays, I know, goes out of his way
25 to assure that, you know, inmates have that access.

1 BY MR. ESQUIVEL:

2 Q. After this conversation with Governor Lee,
3 did you make any changes in this area, meaning
4 inmates' access to spiritual advisors?

5 A. No, I did not.

6 Q. I want to go now to the second topic of
7 conversation with Governor Lee. This is in
8 paragraph 9 of your declaration.

9 A. Okay.

10 Q. You said that you discussed how your
11 religious convictions influenced you and Governor
12 Lee to want spiritual counseling for inmates.

13 What did Governor Lee say to you about how
14 his religious convictions influenced him to want
15 spiritual counseling?

16 A. Well, as I've said, Governor Lee has made it
17 very public he's a man of faith, a Christian. As a
18 Christian he would believe that inmates should
19 obviously accept Christ as their savior to be saved
20 and to have everlasting life. That was a
21 conversation that me and him shared together. We
22 have mutual feelings.

23 The specifics of what he said or what I said
24 I can't remember exactly, but it was the fact that,
25 again, I assured him that inmates had access to

1 spiritual advisors and that it was important to me
2 as commissioner, it was important to the warden,
3 and he seemed satisfied with that.

4 Q. When did this conversation take place?

5 A. It would have been prior to the first
6 execution that Governor Lee had under his term as
7 governor. I don't remember the exact time or date.

8 Q. The third thing that you all talked about was
9 the State of Tennessee's responsibility in carrying
10 out death sentences.

11 What did Governor Lee tell you about that
12 topic?

13 A. He didn't -- best of my recollection, he
14 didn't tell me anything about that topic. I think I
15 shared with him, as commissioner of the department
16 and having been through some executions, that I
17 realized and -- that it was the State of Tennessee's
18 duty and my responsibility to ensure, you know,
19 executions as ordered by the Court were carried out
20 per protocol.

21 That was basically it. Governor Lee didn't
22 share a lot about that, really, to me, that I
23 remember.

24 Q. Did he share anything about that?

25 A. Not that I can remember.

1 Q. Do you recall whether you said anything else
2 to Governor Lee in that conversation about the
3 State's responsibility in carrying out that
4 sentence?

5 A. No. No, again, I think the -- the gist of
6 the conversation was about making sure inmates had
7 access to spiritual advisors and that, as
8 commissioner of the department and as the Department
9 of Corrections was responsible for overseeing the
10 judicial-ordered executions of people in Tennessee.

11 Q. Do you recall any other conversation with
12 Governor Lee about executions, aside from the one
13 you've testified to now?

14 A. I do not.

15 Q. Have you had any conversations with Governor
16 Lee since you submitted this declaration about
17 executions?

18 A. I have not.

19 Q. Have you had -- did you have -- have you had
20 any written communications with Governor Lee about
21 executions?

22 A. I have not.

23 Q. Have you had any electronic communications by
24 email, text or any other electronic means about
25 executions with Governor Lee?

1 A. I have had no form of communication, written,
2 texts, sign language or anything else with Governor
3 Lee about executions in Tennessee.

4 Q. No smoke signals?

5 A. No smoke signals.

6 Q. Now, your declaration also talks about two
7 conversations you had with Governor Haslam about
8 execution. The first you said was informing
9 Governor Haslam why TDOC was going to begin
10 researching lethal injection protocols besides the
11 one drug, pentobarbital, protocol.

12 Tell me what you informed Governor Haslam
13 during that conversation.

14 A. That basically the Department of Corrections
15 could not obtain the pentobarbital and that we would
16 have to look for another form of drugs for lethal
17 injection. That was the -- that was primarily the
18 conversation.

19 Q. Did you tell Governor Haslam why
20 pentobarbital was unavailable?

21 A. I just told him that we could not obtain it
22 and we had made, you know, efforts to obtain it, we
23 had tried to obtain it. And that I had someone on
24 staff, that was one of their primary
25 responsibilities, to obtain the drug, and they were

1 unsuccessful.

2 That was the conversation regarding
3 pentobarbital.

4 Q. Did you specify for Governor Haslam exactly
5 what means or method you had used to try to secure
6 pentobarbital?

7 A. I may have. I don't think -- I don't
8 remember having that conversation. It would have
9 been logical, probably, for me to talk about the
10 efforts we had made, but I don't remember the
11 details of that. I just remember making sure that
12 he knew that we could not obtain pentobarbital and
13 had not been able to for some time and that we were
14 going to have to look at a different method.

15 Q. Do you recall whether Governor Haslam asked
16 you any questions during the course of this
17 conversation?

18 A. I do not.

19 Q. Do you recall whether you had any questions
20 for Governor Haslam during this conversation?

21 A. I don't remember any questions I had for him.
22 It was basically to let him -- to make sure he knew
23 and understood that we could not get pentobarbital.

24 Q. And after you informed him about this, what
25 did Governor Haslam say?

1 A. I don't -- he didn't really have -- didn't
2 give me any directive one way or another. There was
3 no directive. It was more, again, of my informing
4 him of the situation. I don't remember any specific
5 questions he had for me.

6 Q. What was the purpose of informing Governor
7 Haslam about this?

8 A. Well, obviously we had a protocol that was in
9 place that the governor knew we had a protocol in
10 place. To change the protocol would be our
11 responsibility at the department, my responsibility.
12 And as commissioner, my thought that the governor
13 should know that the current drugs, as listed, we
14 did not have access to. I wanted to make sure he
15 knew that.

16 Q. Were you seeking his input or advice in terms
17 of securing alternate drugs or potentially the
18 availability of pentobarbital?

19 A. Well, I think my primary goal was to make
20 sure he was informed, make sure that he knew. As
21 far as what my motive was, that was the primary
22 motive. Obviously, I mean, if he had objected or
23 had some other ideas I'm -- would have said that,
24 but he didn't -- that wasn't the conversation.

25 Q. And did you also inform Governor Haslam in

1 this conversation that the Department of Correction
2 was considering looking at alternate drugs?

3 A. I may have -- I don't remember saying that.
4 I just -- I remember the gist was that we could not
5 get pentobarbital, it was not available, and that
6 obviously if we went forward with a lethal injection
7 protocol that we could deliver, that we would have
8 to find alternate drugs if pentobarbital was not
9 available.

10 Q. Let me ask you to look at paragraph 15 of
11 your declaration, just to make sure I understand the
12 whole scope of the conversation.

13 You said in your declaration that you
14 informed then-Governor Haslam that TDOC was unable
15 to procure pentobarbital for use in executions and
16 that TDOC was considering looking at alternative
17 drugs.

18 A. Uh-huh.

19 Q. It's that last part. I want to know what you
20 had in mind when you signed this declaration, what
21 you remember about informing the governor about
22 alternate drugs.

23 A. Basically that we would have to find
24 alternate drugs to pentobarbital because
25 pentobarbital was not available.

1 Q. Did you give some examples or leads as to
2 what alternate drugs you were considering?

3 A. No, I don't remember doing that. I just -- I
4 just remember telling -- you know, again, advising
5 him that pento was not available and that, unless we
6 were able to get pentobarbital, we would have to
7 use -- look at alternate drugs to replace the
8 pentobarbital in a lethal injection protocol.

9 Q. When you were having this conversation with
10 Governor Haslam did you yourself have in mind
11 alternate drugs that you and the department were
12 pursuing?

13 A. You mean specific drugs?

14 Q. Yes.

15 A. No. At that time I don't remember having any
16 drugs that I had settled on that would -- that I
17 could present to him, no, I do not.

18 Q. When did you have this conversation with
19 Governor Haslam?

20 A. I don't -- I don't remember.

21 Q. Do you know an approximate time period or
22 with reference to some event that was happening?

23 A. Well, obviously it would have been before we
24 changed the protocol, but I -- you're asking me to
25 remember a date and time I just -- I don't know.

Volume II

1 Q. I understand. If that's the best you can
2 remember, then that's understandable.

3 Did you have any other conversations with
4 Governor Haslam about executions?

5 A. Not specifically other than the other
6 conversation that he thanked me and the members of
7 the team for our participation in the protocol.

8 Q. And aside from that conversation can you
9 recall any other conversation you had with Governor
10 Haslam about executions?

11 A. None.

12 Q. Did you and the governor exchange any written
13 communications about executions?

14 A. No, we did not.

15 Q. Did you exchange any electronic
16 communications about executions?

17 A. No, we did not.

18 MR. ESQUIVEL: Can we go off the record?

19 THE VIDEOGRAPHER: One moment, please.

20 Going off the record at 11:55 a.m.

21 (Recess observed from 11:55 a.m. to
22 11:58 a.m.)

23 THE VIDEOGRAPHER: Back on the record at
24 11:58 a.m.

25 ///

1 BY MR. ESQUIVEL:

2 Q. Mr. Parker, I have just a couple of followup
3 questions on timing.

4 A. Okay.

5 Q. Your second conversation with Governor Haslam
6 where he thanked you and senior TDOC staff, do you
7 remember when -- well, it said that that was -- took
8 place after an execution. Do you remember whose
9 execution that was?

10 A. I do not.

11 Q. And do you have any general time period as to
12 when that execution took place?

13 A. I'm sorry, I do not.

14 Q. Do you know how much time elapsed, generally
15 or specifically, between your first conversation
16 with Governor Haslam about executions and this
17 second conversation?

18 A. I do not.

19 MR. ESQUIVEL: That's all the questions
20 I have, Commissioner. Thank you very much for
21 coming back.

22 THE WITNESS: Thank you.

23 THE VIDEOGRAPHER: All right. If there
24 are no further questions, this concludes the
25 deposition. The time is 11:59 a.m.

Volume II

1 THE REPORTER: Do you want this
2 transcribed?

3 MR. ESQUIVEL: Yes.

4 THE REPORTER: Do you want a copy?

5 MR. MITCHELL: Yes, please.

6 FURTHER DEPONENT SAITH NOT
7 (Proceedings concluded at 11:59 a.m.)
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REPORTER'S CERTIFICATE

STATE OF TENNESSEE

COUNTY OF Davidson

I, Terri Beckham, RMR, CRR, and licensed Court Reporter, with offices in Nashville, Tennessee, hereby certify that I reported the foregoing deposition of TONY PARKER, Volume 2, by machine shorthand to the best of my skills and abilities, and thereafter the same was reduced to typewritten form by me. I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome of the proceedings.

I further certify that in order for this document to be considered a true and correct copy, it must bear my original signature, and that any unauthorized reproduction in whole or in part and/or transfer of this document is not authorized, will not be considered authentic, and will be in violation of Tennessee Code Annotated 39-14-104, Theft of Services.



Terri Beckham, RMR, CRR, LCR
Elite-Brentwood Reporting Services
Notary Public State of Tennessee



My Notary Public Commission Expires 3/6/2022
LCR 355 - Expires: 6/30/2022

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